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UNCLAS FRANKFURT 006441

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SUBJECT: Germany's Supreme Court President Predicts Ludin Headscarf Appeal

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1. (SBU) SUMMARY: In a July 15 meeting with Consul General, Federal Constitutional Court (BVG) president Hans-Juergen Papier predicted that Baden-Wuerttemberg (B-W) plaintiff Fereshta Ludin would appeal a newly-minted B-W law banning headscarves for civil servants (reftel.) Papier opined that the motion would force a decision from the Karlsruhe-based Federal Constitutional Court, Germany's supreme judicial authority, on whether the B-W law's special exemption for Christian and Jewish religious symbols signifies preferential treatment for those faiths and contravenes religious freedom as enshrined in Germany's constitution. END SUMMARY.

2. (U) Consul General visited Federal Constitutional Court (FCC) President Hans-Juergen Papier on July 15. Papier began his presidency in March of 2002 and, unlike predecessors Ute Limbach and Roman Herzog (who went on to become Federal President of Germany), has limited experience in elected office. He has instead amassed a reputation as one of Germany's keenest legal minds before becoming FCC president. He is a member of the Christian Social Union (CSU) (Bavaria's conservative ruling party) and has registered minority opinions against the Court's sanctioning of same sex marriages and its abolition of Bavaria's restrictions on abortion.

3. (SBU) Papier voiced his expectation that B-W plaintiff Fereshta Ludin would appeal the Leipzig Federal Administrative Court's upholding of a recent B-W law banning headscarves for public servants. The FCC attracted controversy in September 2003 for its decision to allow state parliaments to pass laws regulating or forbidding the wearing of headscarves by public school teachers. The court's verdict addressed a long-running dispute between teacher Fereshta Ludin and the B-W government over Ludin's right to wear her headscarf while teaching. Papier predicted that the case would end up in the First Senate (the section of the FCC that rules on matters of religious freedom), as opposed to Leipzig's assignation of the matter to its own Second Senate (which deals with the rights of civil servants.) The FCC president believes that Ludin's appeal will force his court to decide whether the B-W law's exemption of "Christian and Jewish traditions" from the ban contradicts the doctrine of religious freedom mandated in Germany's constitution.

4. (SBU) Papier noted that increasing involvement from the European Human Rights Commission and the European Court complicated the FCC's ability to set and maintain legal precedent. He cited the independent European Human Rights Commission review of the B-W headscarf law as an example. Papier added that ratification of the European Constitution would further blur jurisdictional authority.

5. (SBU) COMMENT: The Ludin appeal should reach Karlsruhe before the end of the year. Although Papier is a staunch conservative, the liberal composition of the First Senate and its relative independence from the court presidency could mean that a decision striking the B-W law's reference to "Christian and Jewish traditions" is likely. END COMMENT.

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